

I. DEFENDANTS DA GARZA AND ADA DRUMMOND’S RESPONSE

2. Plaintiffs filed a Motion to Strike (ECF No. 56), asking the Court to Strike the Motion to Dismiss (ECF Nos. 13 and 19) filed by Defendants Garza and Drummond, as well as Motions to Dismiss filed by numerous other Defendants.¹

3. Plaintiffs’ Motion to Strike with respect to the Travis County Defendants is baseless and without merit. Plaintiffs ask this Court to strike the motions to dismiss for the Travis County Defendants based on a suggestion that the Travis County Attorney may not represent Travis County officials sued in their individual (or as Plaintiffs call it, “private”) capacities. (ECF No. 56 at 1). Section 102.004 of the Texas Civil Practice and Remedies Code specifically provides, in pertinent part:

(a) A local government may provide legal counsel to represent a defendant for whom the local government may pay damages under this chapter. The counsel provided by the local government may be the local government’s regularly employed counsel, unless there is a potential conflict of interest between the local government and the defendant, in which case the local government may employ other legal counsel to defend the suit.

Tex. Civ. Prac. & Rem. Code § 102.004. DEFENSE COUNSEL. *See also, e.g., Easley v. Martin*, 19 F.3d 15; 1994 WL 93415, at *5-6 (5th Cir. Mar. 15, 1994) (per curiam) (unpublished). It should also be noted that Plaintiffs make no reference to the undersigned counsel’s representation of Travis County Sheriff Sally Hernandez, or Travis County District Attorney Garza in his official capacity. It should further be noted that Plaintiffs misrepresent to the Court that the Travis County Attorney’s Office filed motions to dismiss on behalf of Defendants “Lenn Carter, Robert Eller and Crystal Gill, Marc Bruner, Kenton Johnson, Barbara Boulware-Wells, Jeff Ulmann, were filed improperly as Scott M. Tschirhart, State Bar No. 24013655, attorney for Sunset Valley

¹ It should be noted that Defendant Travis County Sheriff Sally Hernandez’s Motion to Dismiss [ECF No. 16] was not mentioned in Plaintiffs’ Motion to Strike.

Defendants, as outside counsel hired by the city of Sunset Valley to represent Sunset Valley defendants, lacked standing to represent persons sued in their private capacity.” (ECF No. 56 at 1-2). Not only does this statement not make any sense, but it is also clearly factually incorrect, as the Travis County Attorney’s Office did not file any pleadings on behalf of these defendants, who are represented by private counsel, Scott M. Tschirhart, who has filed a separate response to the Motion to Strike on behalf of his clients. *See* ECF No. 59.

II. OBJECTION TO MOTION

4. The Travis County Defendants object to the motion in its entirety as meritless, and filed in violation of the Local Rules. Plaintiffs did not make any effort to confer with the undersigned. *See* LOCAL RULE CV-7(G).

5. Plaintiffs do not present any authority for the proposition that the Travis County Attorney cannot represent the Travis County Defendants in this matter. The failure to undertake the most minimal due diligence is a violation of the Federal Rules. *See* Fed. R. Civ. P. 11(b). At this time, the Travis County Defendants are not seeking sanctions under that Rule but reserve the right to do so if Plaintiffs file additional pleadings with no basis in fact or law to harass or increase the litigation costs and effort of the Travis County Defendants.

III. PRAYER

6. For the reasons stated above, Defendants DA Garza and ADA Drummond respectfully request that the Court deny Plaintiff’s [sic] Motion to Strike Rule 12 Motion.

Respectfully submitted,

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/s/ Anthony J. Nelson

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JOSÉ GARZA AND ASSISTANT DISTRICT
ATTORNEY ROB DRUMMOND

CERTIFICATE OF SERVICE

I certify that on September 28, 2023, a copy of **Defendants Travis County District Attorney José Garza and Assistant District Attorney Rob Drummond's Response to Plaintiff's [sic] Motion to Strike Rule 12 Motion** was electronically filed on the CM/ECF system, and sent via U.S. Certified Mail, Return Receipt Requested, to the following:

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/s/ Anthony J. Nelson
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